

## **REMARKS/ARGUMENTS**

Claims 1-10, 12-20 and 22-25 are now pending in this application. Of these claims, claims 1, 6, 7, 10, 12, 17 and 18 have been amended, while claims 11 and 21 have been canceled. Applicants have amended the claims to clarify the claim language, and incorporate the allowable subject matter indicated by the Examiner into independent claims 1, 10, 12 and 17. Claims 24 and 25 have been added and incorporate the allowable subject matter of claim 7. No new matter has been added to the prosecution of this application.

For at least the reasons stated below, Applicants assert that all claims are now in condition for allowance.

### **Drawings**

The drawings are objected to under 37 CFR 1.83(a), as not showing every feature of the invention, specifically the limitations of claim 23. Applicants oppose this objection. Applicants assert that all claimed features are shown in the drawings.

The Examiner is directed to Figure 9 of Applicants' disclosure, wherein it is clearly shown that loop 68 is positioned in a different plane than the plane created by the two extending portions of leg 66. Loop 68 is bent and extending in essentially a horizontal plane, while the two extending portions are essentially in a vertical plane.

Accordingly, Applicants assert that the objection to the drawings is improper and request withdrawal of the objection.

### **35 U.S.C. § 112 Rejection**

Claims 6, 7, 10, 11, 16, 18, 21, 22 and 23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as

the invention. Applicants assert that the 35 U.S.C. § 112, second paragraph rejections of the above-identified claims are moot in light of the above claim amendments. Applicants believe that what the Examiner regards as vague and indefinite the claims has been obviated, and request withdrawal of the 35 U.S.C. § 112 rejection of claims 6, 7, 10, 11, 16, 18, 21, 22 and 23.

### **35 U.S.C. § 102 Rejections**

Claims 1, 3, 4, 8, 9 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Hillestad*, U.S. Patent No. 5,179,799. Applicants oppose this rejection in light of Applicants' claims, as now amended.

*Hillestad* fails to disclose all the limitations of Applicants' claims. Specifically, *Hillestad* is a tomato plant support. The tomato support is not intended or capable of supporting plant containers, as claimed by Applicants. Furthermore, the *Hillestad* tomato support has an inverted cone shape, which is directly contrary to Applicants' cone or pyramid shape, which provides greater support of the structure at the base that *Hillestad* cannot provide.

Applicants' invention has a ledge on the legs for a gardener/device user to place a foot thereon and apply a downward force to direct the plant support into the ground, as claimed. What the Examiner points out as a ledge in *Hillestad* (15c) is not a ledge, but rather a hook/connection point for the lower ring 15 to attach to the vertical rod. Further, Applicants' ledge is located at a point below the connection point of the lower ring to the leg, as claimed, which is not disclosed by *Hillestad*. The hook of *Hillestad* is for the sole specific purpose of holding ring 15 place. Thus, *Hillestad* fails to disclose or suggest a ledge as, claimed by Applicants.

Furthermore, the leg has a loop formed at the top of the leg above the upper ring, that works in conjunction with the ledge, provides a location to a gardener/device user to place their hands to handle the plant support.

For the above-indicated reasons, *Hillestad* fails to disclose or suggest

all of the limitations of claims 1, 3, 4, 8, 9 and 15. Accordingly, the 35 U.S.C. § 102(b) rejection of claims 1, 3, 4, 8, 9 and 15 is improper. Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection.

Claims 1, 6, 10, 12, 14, 16, 17, 18 and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Thornhill*, U.S. Patent No. Des. 259,929. Applicants oppose this rejection in light of Applicants' claims, as now amended. The rejection of claims under *Thornhill*, fails for the same reasons as described for *Hillestad* above. *Thornhill* is a tomato plant cage that happens to be reversible. However, *Thornhill* fails to disclose a ledge on the legs that is used by a gardener/device user to use a foot to direct the plant support into the ground, as claimed by Applicants. Furthermore, *Thornhill* fails to disclose U-shaped legs, as claimed by Applicants.

*Thornhill* fails to disclose or suggest all of the limitations of Applicants' claims 1, 6, 10, 12, 14, 16, 17, 18 and 22. Accordingly, the 35 U.S.C. § 102(b) rejection of the claims is improper. Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection.

### **35 U.S.C. § 103 Rejections**

Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hillestad*, U.S. Patent No. 5,179,799 in view of *Thornhill*, U.S. Design Patent No. Des. 359,929.

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hillestad* in view of *Elliott*, U.S. Patent No. 5,640,802.

Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Thornhill* in view of *Wourms et al.*, U.S. Patent No. 6,119,393.

Claims 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Thornhill*.

Applicants oppose these 35 U.S.C. § 103(a) rejections in light of Applicants' claims, as presently amended. The rejections of claims 2, 5, 13,  
Page 9 of 16

19 and 20 under various combinations of *Hillestad, Thornhill, Elliott, and Wourms et al.* fail to disclose all of the limitations of the claims. For example, *Hillestad, Thornhill, Elliott, and Wourms et al.* all fail to disclose a ledge, as discussed above. None of the cited references disclose or suggest a plant support that is intended or capable of supporting a plant container above ground, as claimed by Applicant. *Wourms et al.* discloses holding a potted plant within a body of water, not in an above ground position as Applicants' invention. Furthermore, none of the cited references teach a U-shaped leg member, as claimed by Applicant. Thus, *Hillestad, Thornhill, Elliott, and Wourms et al.*, each alone, or in combination, fail to disclose or suggest all of the limitations of the claims.

Moreover, Applicants' independent claims presently contain subject matter indicated as allowable over the art of record by the Examiner.

Accordingly, the art of record, alone or in combination, fails to disclose or suggest all of the limitations of Applicants' claims. Thus, the 35 U.S.C. § 103(a) rejection of claims 2, 5, 13, 19 and 20 is improper, and Applicants request withdrawal of the 35 U.S.C. § 103(a) rejections.


### **Conclusion**

For at least the above indicated reasons, Applicant submits that all pending claims are distinguishable over the art of record and now in condition for allowance and respectfully requests that a Notice of Allowance be issued in this case. If the Examiner believes that a conference would be of value in expediting the prosecution of this application, the undersigned can be reached at the telephone number listed below.

Attached is a marked up version of the changes made to the specification by the current amendment. The attached page is captioned "Version with markings to show changes made."

Should any additional fees be necessary, the Commissioner is hereby authorized to charge or credit any such fees or overpayment to Deposit Account No. 50-1901.

Respectfully submitted,

By   
W. Glenn Edwards, Reg. No. 44,426  
**Oppenheimer Wolff & Donnelly LLP**  
45 South Seventh Street  
Suite 3300  
Minneapolis, MN 55402  
Telephone: 612.607.7278  
Facsimile: 612.607.7100  
E-mail: WEdwards@oppenheimer.com

## **VERSION WITH MARKINGS TO SHOW CHANGES MADE**

### **IN THE CLAIMS**

Please amend claims 1, 6, 7, 10, 11, 12, 17, 18 and 21 as follows.

1. A stackable plant support comprising:

an upper ring;

a lower ring;

at least one leg attached to the upper ring and lower ring, the leg adapted to support the upper ring and lower ring and engage the ground, the leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground, the ledge defined by a bend in said leg, the ledge located below the position where the lower ring attaches to the leg; and

the plant support shaped to enclose plants and support plant containers.

6. The stackable plant support of claim 1 wherein said at least one leg is an elongated U-shaped member comprising a closed end and an open end defined by two portions of the U-shaped member;

the upper ring is attached to said at least one leg proximate the closed end such that a loop is formed above the upper ring by the closed end of the leg; and

the ends of the two portions of the U-shaped member are adapted to engage the ground.

7. The stackable plant support of claim 6 wherein the ledge has[is defined by] a bend in the two portions of the U-shaped member[, the ledge located below the position where the lower ring attaches to the U-shaped member].

10. A plant cage apparatus comprising,

at least two arcuate parallel vertically spaced horizontally disposed members, wherein the two arcuate members are an upper ring and a lower ring, the lower ring having a larger diameter than the upper ring, the upper and lower ring shaped so as to facilitate the stacking of a plurality of plant cage apparati, and to accommodate the insertion of a plant container within the plant cage apparatus, the upper ring engaging a portion of the plant container;

at least two legs attached to the circular members wherein each of said legs is formed with an elongate inverted U-shaped member;

[wherein the plant cage is adapted to support an associated plant.]

a ledge formed on at least one leg of said legs for securement of the plant cage apparatus relative to the associated plant; [and]

at least one loop formed by the connection of one of said legs and one of said arcuate members for removal and transport of the plant cage apparatus; and

wherein the plant cage is adapted to support an associated plant.

Cancel claim 11.

12. A method for using a wire structure as both a supporting structure for plants and plant containers comprising:

providing a wire structure centered about a vertical axis, the wire structure having: at least two parallel rings vertically spaced and horizontally disposed connected to at least two U-shaped legs extending downwardly from said rings, the wire structure defining an interior volume; a ledge

formed on at least one of said legs for securement of the wire structure; and at least one loop formed by the connection of one of said legs and one of said rings for removal and transport of the wire structure;

wherein the at least two rings include an upper ring and a lower ring, the lower ring having a larger diameter than the upper ring, the upper and lower ring shaped so as to facilitate the stacking of a plurality of wire structures, and to accommodate the insertion of a plant container within the structure, the upper ring engaging a portion of the plant container;

inserting the legs into the ground for using the wire structure as a support for plants, wherein a downward force is applied to the ledge by a wire structure user to insert the legs into the ground without causing damage to leg-to-ring connections of the wire structure; and

pulling up on said at least one loop to remove and transport the wire structure when the wire structure is not in use.

17. A support member for a plant support apparatus, the support member comprising:

at least one leg attachable to an upper ring and a lower ring, the leg adapted to support the upper ring and lower ring and engage the ground, the at least one leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground; and

wherein the ledge is defined by a bend in the at least one leg, the ledge located below the position where the lower ring attaches to the U-shaped member.

18. The support member of claim 17 wherein said at least one leg is an elongated U-shaped member comprising:

a closed end and an open end defined by two portions of the U-shaped member;



a portion of the upper ring adapted to attached proximate the closed end of said at least one leg such that a loop is formed above the upper ring by the closed end of the leg; and

the ends of the two portions of the U-shaped member are adapted to engage the ground.

Cancel claim 21.

22. The support member of claim 18 wherein the loop is positioned in the same plane as the two portions of the U-shaped member at the open end.

23. The support member of claim 18 wherein the loop is positioned in a different plane as the two portions of the U-shaped member at the open end.

Please add the following new claims:

24. A stackable plant support comprising:

at least one ring;

at least one leg attached to said at least one ring, the leg adapted to support said at least one ring and engage the ground, the leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground, the ledge defined by a bend in said leg, the ledge located below the position where said at least one ring attaches to the leg;

wherein said at least one leg is an elongated U-shaped member comprising a closed end and an open end defined by two portions of the U-shaped member;

the at least one ring is attached to said at least one leg proximate the closed end such that a loop is formed above the ring by the closed end of the leg; and

the ends of the two portions of the U-shaped member are adapted to engage the ground; and

the plant support shaped to enclose plants and support plant containers.

25. A method for using a wire structure as both a supporting structure for plants and plant containers comprising:

providing a wire structure centered about a vertical axis, the wire structure having: at least one ring vertically spaced and horizontally disposed connected to at least one U-shaped leg extending downwardly from said at least one ring, the wire structure defining an interior volume; a ledge formed on said at least one leg for securement of the wire structure; and at least one loop formed by the connection of said at least one leg and at least one ring for removal and transport of the wire structure;

wherein the ledge defined by a bend in said leg, the ledge located below the position where said at least one ring attaches to the leg;

inserting said at least one leg into the ground for using the wire structure as a support for plants, wherein a downward force is applied to the ledge by a wire structure user to insert the at least one leg into the ground without causing damage to leg-to-ring connections of the wire structure; and

pulling up on said at least one loop to remove and transport the wire structure when the wire structure is not in use.